



PO Box 1749  
Halifax, Nova Scotia  
B3J 3A5 Canada

## Item No. 10.1.6

Halifax Regional Council  
December 9, 2008

**TO:** Mayor Kelly and Members of Halifax Regional Council

A handwritten signature in black ink, appearing to read "Dan English".

**SUBMITTED BY:**

\_\_\_\_\_  
Dan English, Chief Administrative Officer

A handwritten signature in black ink, appearing to read "Wayne Anstey".

\_\_\_\_\_  
Wayne Anstey, Deputy Chief Administrative Officer - Operations

**DATE:** November 25, 2008

**SUBJECT:** Encroachment Agreement - 5786 Southwood Drive, Halifax

### **ORIGIN**

Application by Mr. Keir Stewart, owner of property located at 5786 Southwood Drive, Halifax.

### **RECOMMENDATION**

It is recommended that Halifax Regional Council approve the attached Encroachment Agreement to allow for a masonry wall landscaping enclosure to be located within the HRM right of way adjacent to 5786 Southwood Drive and require that the driveway pillars and sections of fence be removed.

## **BACKGROUND**

During the final inspection of a newly constructed single unit dwelling at 5786 Southwood Drive, it was noted that landscaping features had been constructed within the HRM right of way. The landscaping includes masonry wall enclosure, driveway pillars and sections of a fence. The fence sections are connected to an existing fence which runs the length of this property and continues through the adjacent property.

The owner was notified that this work was not authorized. The owner has subsequently submitted an encroachment application to allow for the encroachments to remain. Such application for a permanent encroachment can only be approved by Regional Council under the Encroachment By-law (By-law E-200).

## **DISCUSSION**

While typically the HRM right of way should be maintained for street purposes, Regional Council can consider applications for permanent encroachments. Staff review the applications with respect to safety and maintenance concerns in order to provide appropriate recommendation and rationale to aid in Council's decision.

In this situation, the property owner has, without authorization, filled the entire right of way frontage of the property with various landscaping. This, in principle, should not be acceptable to HRM who are the owners of the ROW, however, landscaping in front of private property is not a unique situation. Some features of this landscaping are considered permanent structures and therefore require approval by Council under the Encroachment Bylaw.

As the masonry enclosure is approximately 1.5 metres at it's closest point to the back of the curb, it appears to leave sufficient room for snow storage although it could be damaged during snow clearing operations. The proposed encroachment agreement outlines that if damage occurs, it is the responsibility of the property owner to repair. For this reason and the fact that the distance back from the curb reduces safety concerns, it would be a reasonable compromise to allow the masonry enclosure to remain.

In staff's view, the driveway pillars are a sight distance problem for vehicles exiting the driveway. The driveway pillars and section of fence are approximately 1.1 metres from the back of the curb. There are week day daytime no parking signs on the south side of Southwood Dr. with the curb lane being for vehicular movement. There is a public safety concern as visibility is obscured for drivers exiting the driveway in potential conflict with motorists. The pillars and section of fence are not integral to the existing fence and could be removed.

The following rationale was provided by the owner as part of the application:

- The masonry enclosure was constructed to allow for the planting of trees and other greenery, since the area is predominantly bedrock with very little soil to support vegetative growth.

- The driveway pillars were constructed to provide visual identification for the intricate driveway which accesses the property.

If Council chooses to allow the encroachment, the following would apply:

- There would be an annual encroachment fee based on an occupied area of 25.5 square metres. In accordance with By-law E-200, the encroachments would therefore be subject to an annual encroachment fee of \$255.00(\$1.00 per 0.1 square metres).
- The attached draft encroachment agreement also includes the following:
  - a. The masonry encroachment must be removed at the owners expense if requested by HRM.
  - b. Any maintenance to the masonry encroachments must comply with Streets By-law S-300.
  - c. Record information will be provided in paper and electronic format.

Due to the fact that landscaping within the right of way is not uncommon and that in this situation the masonry enclosure is located such that it does not cause serious safety or maintenance concerns, allowing the enclosure to remain is a fair compromise for this challenging site.

### **BUDGET IMPLICATIONS**

If the encroachment is approved, the annual fee of \$255.00 will be a new revenue source in account R112 for HRM.

### **FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN**

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

### **ALTERNATIVES**

1. Council could choose to approve the encroachment for the masonry landscaping enclosure only, and require that the driveway pillars and section of fencing be removed from the right of way. Staff recommends this option for the reasons outlined in the report. This would result in an annual encroachment fee of \$255.00.
1. Council could choose to approve the full encroachment. Staff does not recommend this

alternative since the driveway pillars represent a safety concern. This would result in an annual encroachment fee of \$266.00.

2. Council could choose not to approve the proposed encroachment agreement. Staff does not recommend this option as the landscaping features do not pose a significant safety concern and the recommended option represents a fair compromise for a difficult site.

**ATTACHMENTS**

Attachment A: Draft Encroachment Agreement

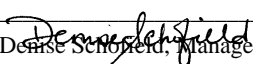
Attachment B: Letter from the Applicant - Mr. Keir Stewart

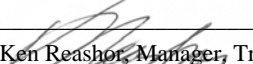
Attachment C: Photos of Masonry Landscaping Enclosure and Driveway Pillars


Attachment D: Sketch of Proposed Encroachments

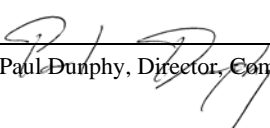
A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/agenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.


Report Prepared by: Ashley Blissett, Development Engineer, 490-6848  
Phil Francis, Manager, Right of Way Services 490-6219

Report Approved by:   
Denise Schofield, Manager, Development Engineering, 490-6252

  
Ken Reashor, Manager, Traffic and Right of Way, 490-6637

Financial Approval by:   
Catherine Sanderson, Senior Manager, Financial Services, 490-1562

Report Approved by:   
Paul Dunphy, Director, Community Development

  
Mike Labrecque, Director, Transportation & Public Works

**Attachment A: Draft Encroachment Agreement**

This **Encroachment License Agreement** made this       day of       , 2008

BETWEEN:

**HALIFAX REGIONAL MUNICIPALITY**

Of the One Part

and

**Mr. Keir Stewart, 5786 Southwood Drive, Halifax**

Of the Other Part

**Recitals**

1. (1) Whereas the owner of 5786 Southwood Drive wishes to have masonry wall landscaping enclosure within the public right-of-way on Southwood Drive, Halifax for personal use;

(2) And Whereas by resolution of the Halifax Regional Municipal Council on \_\_\_\_\_, 2008, the Halifax Regional Municipality agreed to give Mr. Keir Stewart an encroachment license in accordance with the terms and conditions set out in Halifax Regional Municipality By-law E-200, being the Encroachment By-law, and as contained in this license agreement.

**Definitions**

2. In this agreement, unless the context otherwise requires:

- (a) “HRM” means the Halifax Regional Municipality
- (b) “Engineer” means the Engineer as defined by the Halifax Regional Municipality Act
- (c) “Property Owner” means Mr. Keir Stewart, the Owner of Property at 5786 Southwood Drive, Halifax

**License**

3 Subject to the terms of this encroachment license agreement, HRM hereby grants to Mr. Stewart the non-exclusive right for the placement and maintenance of masonry wall landscaping enclosure on that portion of the unpaved right-of-way fronting 5786 Southwood Drive, Halifax.

**Removal**

4 The masonry wall landscaping enclosure must be removed if requested by HRM. Such a removal will be at the expense of the Property Owner.

**Permits**

5. The Property Owner agrees to comply with all municipal by-laws including the Streets By-law, S-300 for the all maintenance work associated with this encroachment within the right-of-way.

**Record Drawings**

6. The Property Owner shall provide a copy of the record drawings of the completed work in hard copy and electronic format.

**Indemnity**

7. The Property Owner agrees to indemnify and save HRM harmless from all claims, liabilities and expenses of any kind in any way related to or connected with the grants of the rights set forth in this license agreement or from the existence of the masonry landscaping however caused, except to the extent that the loss arises out of the gross negligence of HRM.

**Fees**

8. The Property Owner, agrees to pay the fees set out in Encroachment By-law E-200, and for the purpose of the calculation of said fees, it is agreed that the space occupied by the encroachment is 25.5 square metres, at a rate of \$1.00 per 0.1 square metres, resulting in an annual fee of \$255.00 to be paid by March 1<sup>st</sup> annually.

**Occupational Health & Safety Act**

9. The Property Owner agrees to comply with the requirements of the Occupational Health & Safety Act and all regulations enacted pursuant thereto. Specifically the Property Owner agrees to exercise the due diligence required by the Act in ensuring that to the extent possible the requirements of the Occupational Health & Safety Act and its regulations are followed by its contractors or agents.

**Termination**

10. (1) Either party may terminate this license agreement at any time.

(2) Upon termination of the license agreement, the Property Owner shall:

(a) remove masonry wall landscaping enclosure and restore the right of way of Southwood Drive

**Notices**

11. Any written notice or communication relating to the administration of this agreement to be given or delivered by one party to the other shall be deemed to be duly given or delivered by hand, by fax or by courier to the following addresses or such other address that may subsequently be provided:

Halifax Regional Municipality  
Director of Transportation and Right of Way Services  
PO Box 1749  
Halifax, N.S. B3J 3A5

and

Mr.Keir Stewart

**Legal notices in respect of HRM must given in compliance with the Municipal Government Act**

12. This agreement shall enure to the benefit of and be binding upon the parties hereto, their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed this License agreement as of the day and year first above written.

**HALIFAX REGIONAL MUNICIPALITY**

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Mayor Peter Kelly

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Municipal Clerk

**Mr. Keir Stewart**

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**Attachment B**

Keir Stewart  
5786 Southwood Dr.  
Halifax, NS  
B3H 4P4

August 5, 2008

Ashley Blissett  
Developmental Engineer  
Community Development  
Halifax Regional Municipality  
P.O. Box 1749  
Halifax, NS  
B3J 3A5

Re: 5786 Southwood Drive, Halifax, NS

Dear Ms Blissett

Thanks for your letter of May 4, 2008, regarding two masonry driveway pillars and a masonry landscaping wall. These structures are on the HRM right-of-way at the above address, as you have noted in your letter. I would like to apply for a permanent encroachment license.

My apologies are offered for not applying for this encroachment prior to their construction. I do thin, however, that there are some strong reasons for allowing the structures to stand.

The masonry landscaping wall was placed to allow us to plant some trees, and was necessary for this purpose as there is no soil at this location. The bedrock is at the surface. The appearance of the wall and its contained greenery is beautiful and greatly enhances the appearance of this area. It poses no safety hazard, and does not impede the general publics' right-of-way. I've had many compliments from neighbors and general traffic and I've had no complaints. I believe, to remove it, would greatly diminish the appearance and greenery of the street, as it would result in the removal of all the contained trees and plants.

The masonry driveway pillars are part of the fencing that is on either side of the driveway. The fencing is necessary for safety reasons, as the driveway had to be drilled out of the rock, leaving a substantial drop-off. This drop-off is significant on the edge closest to the house. The pillars themselves are not integral to the fence, and could be

removed, but they do supply a visual landmark for a somewhat precarious driveway, and visually tie in with the other pillars on the property. They do not impede the public's access, other than, in conjunction with the fence, preventing falls over the driveway edge. Again, I believe they significantly improve the appearance of the whole area.

I've enclosed a survey plan of Lot 9B, with penciled in areas depicting the pillars, masonry wall, and fence. I would be glad to be of any further assistance and I will call in a few days to make sure everything is in order. Should you need to contact me before that, I can be contacted through the e-mail address listed above or at \_\_\_\_\_

Thank you for your assistance in this matter

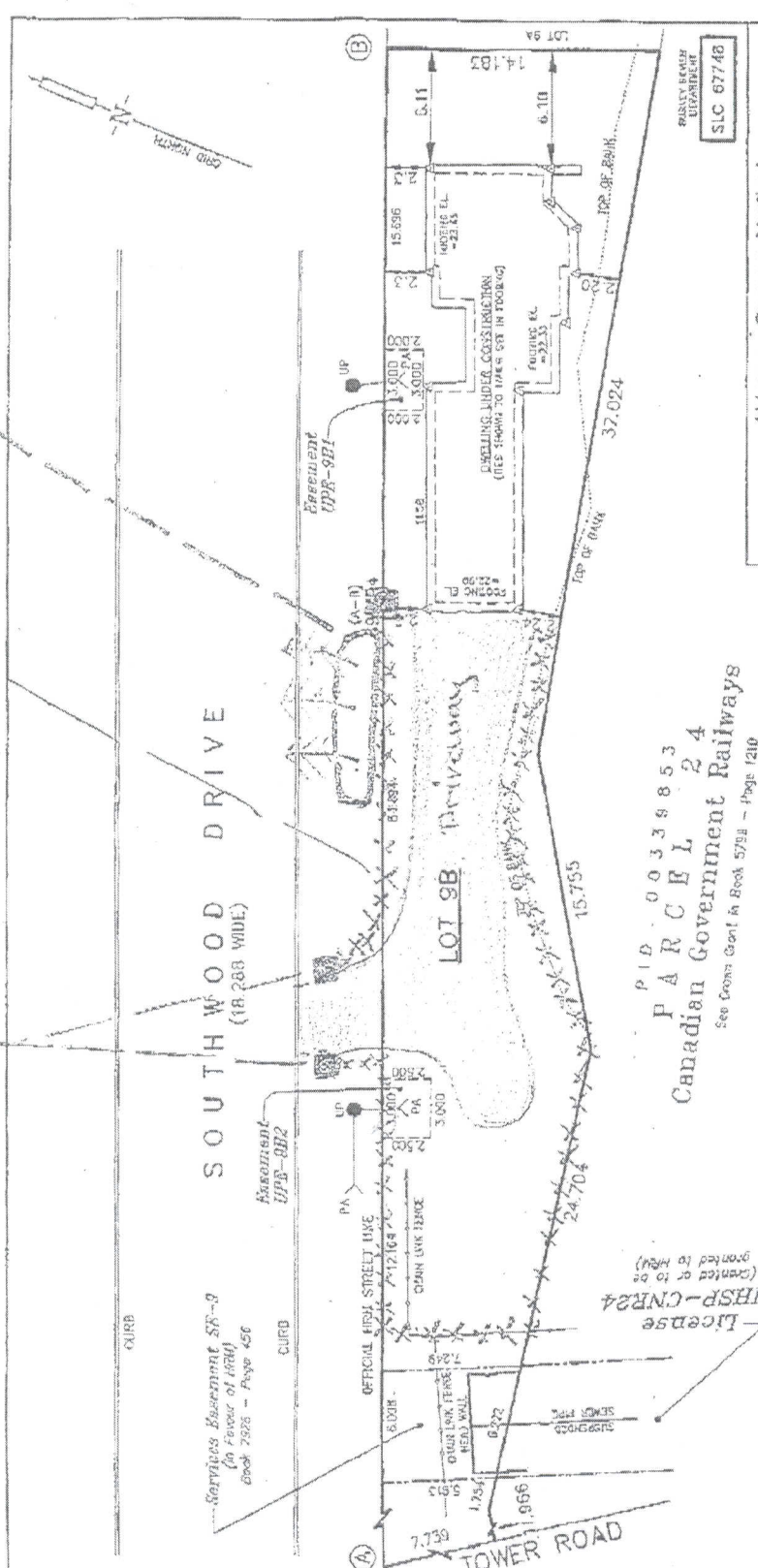
Sincerely

Keir M Stewart

KMS/dlw

enclosure

Pillars (at end of fence) → Masonry wall (N.B.)



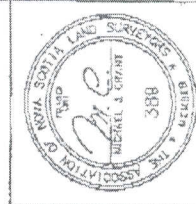
PID 00339853  
PARCEL 24  
Canadian Government Railways  
See Grant Cont in Book 579B - Page 1210

License  
HSP-CNR24  
(Granted or to be granted to Hwy)

LEGEND  
A - ties set in towers

CERTIFIED TO: PROVIDENT DEVELOPMENT INC.  
RE: LOT 9B, SOUTHWOOD DRIVE, HALIFAX COUNTY, NOVA SCOTIA

- \* Boundaries for subject lands are defined by ALDERNEY SURVEYS LIMITED PLAN NUMBER 075655-3 SIGNED BY MICHAEL J. GRANT, N.S.L.S. DATED JUNE 11, 2007 & APPROVED AUGUST 9, 2007.
- \* Field survey for subject lands was carried out on SEPTEMBER 24, 2007.
- \* Physical features shown hereon are located to plotting accuracy unless specifically dimensioned.
- \* This Surveyor's Location Certificate shall not be used for boundary definition or as a reference document for the preparation of legal documents.

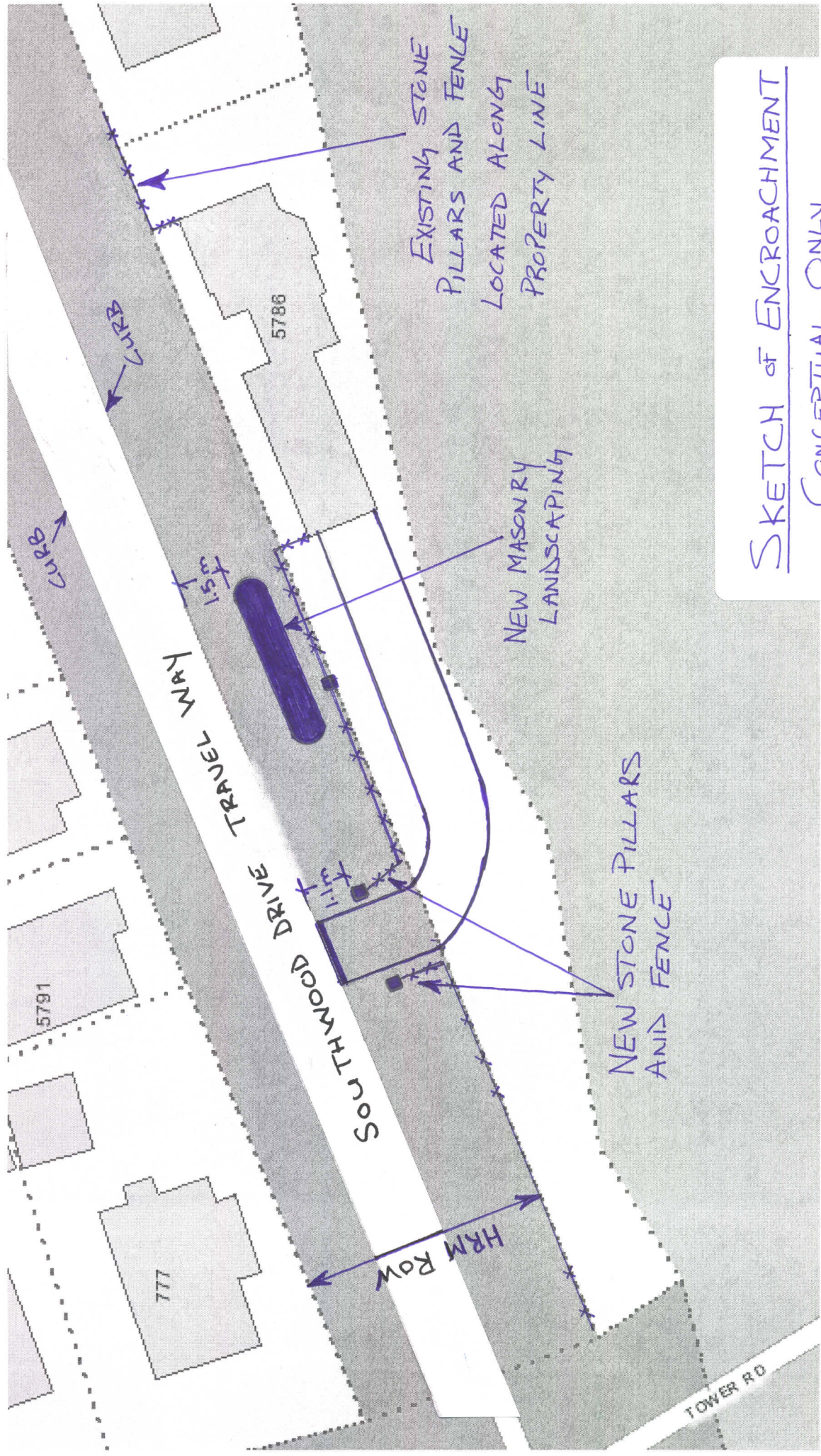


Alderney Surveys Limited  
Nova Scotia Land Surveyors  
327 Prince Albert Road, Dartmouth, Nova Scotia B2Y 1W7

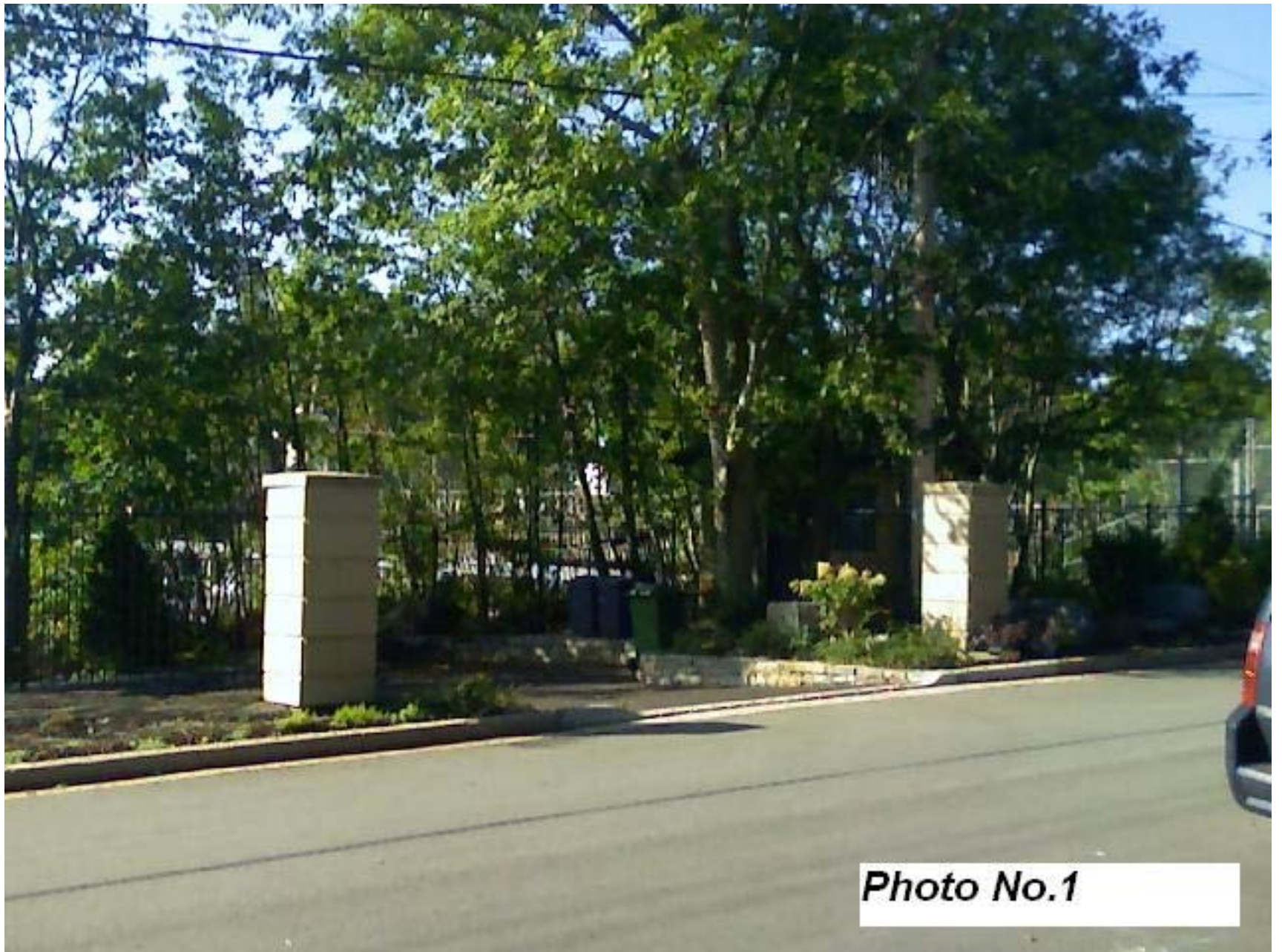
Surveyor's Location Certificate

I, Michael J. Grant, Nova Scotia Land Surveyor, hereby certify that this Surveyor's Location Certificate was prepared and issued in accordance with the provisions of Part VI of the Nova Scotia Land Surveyors Regulations made pursuant to Section 8 of the Land Surveyors Act.  
Dated: SEPTEMBER 25, 2007.

Drawn: M.J.G.  
Scale: 1:200  
File No: 075655-12  
Signed: M. Grant



SKETCH OF ENCROACHMENT  
CONCEPTUAL ONLY  
NOT TO SCALE



***Photo No.1***



*Photo No. 2*



*Photo No. 3*